

**BY EMAIL ONLY**[info@investorcompensation.ie](mailto:info@investorcompensation.ie)

The Investor Compensation Company DAC (the “**ICCL**”)  
C/o The Central Bank of Ireland  
North Wall Quay  
Dublin 1  
D01 F7X3

January 2024

**Re: Risk Equalisation Rule (RER) Consultation 2023**

Dear Sir/Madam,

We refer to the consultation paper published by the ICCL on 24 November 2023 (the **Consultation Paper**) in relation to the ICCL’s consultation (the “**Consultation**”) on the Risk Equalisation Rule (**RER**) establishing the Risk Equalisation Levy (**REL**). The Consultation Paper invites submissions from Investor Compensation Scheme (**ICS**) Participants on four proposals for amending the RER (the **Proposals**).

**Proposal 1 - €250million Threshold**

The ICCL proposes that the €250million threshold for triggering the RER will continue to apply but that for any RER transaction that exceeds the €250m threshold, the first €250m of client assets would not count towards the calculation of the REL.

IBIE supports this proposal. In our view, the current requirement for firms that exceed the threshold to pay the REL on all covered assets including the first €250million contributes to disadvantaging those firms as compared to firms that do not come within the scope of the RER. Excluding the first €250million of covered assets transferred from the scope of the REL would mean that this disadvantage does not impact those assets and would lessen the overall disadvantage on the firms affected.

We note the ICCL’s proposal to keep the threshold for applying the REL at €250million. IBIE is not aware of the rationale underlying this threshold, however, it appears to be arbitrary. For example, a firm will be required to pay the REL if it transfers in excess of €250 million in covered assets over a three-year period, but not if it transfers this amount over a four-year period.

**Proposal 2 – Staggering REL Payments**

The ICCL proposes to amend the RER to provide for the option of staggering the payment of the REL to allow for a more even distribution of payments over the lookback period.

IBIE has no substantive comments on this proposal although IBIE is generally in favour of providing firms with more options for payment of the REL in a way that more accurately reflects the timing for large asset transfers.

### **Proposal 3 – Amendments to Annual Levy and Annual Levy ‘Relief’**

The ICCL is proposing to alter the Fund A basis of assessment contained in the Annual Funding arrangements to exclude the number of eligible clients that are included in the RER calculation (“**RER Eligible Clients**”) from the total number of eligible clients for Annual Levy purposes, subject to a three-year limit.

IBIE is supportive of the proposed amendments outlined in Proposal 3 but does not consider that they go far enough. Specifically, the REL is calculated in a way that requires in scope firms to pay the entire ex ante amount of the maximum potential compensation (e.g. €20,000) that could be paid out to a client should the firm become insolvent, at the time the client becomes protected by the ICS. It is therefore unclear why an investment firm should ever have to pay the Annual Levy in respect of such clients. At the very least, such clients should benefit from a much more substantial exclusion period than the current 1-year period or even the proposed three-year period.

We note that Proposal 3 includes an additional reporting requirement which means that a firm will need to report its total eligible client number and the number of RER Eligible Clients during the firm’s financial year. Currently the REL is calculated on the basis of retail client assets migrated and not those of eligible investors. We consider that when implementing this proposal, the ICCL should amend the REL so that it likewise applies to eligible investor assets.

While IBIE welcomes the proposed exclusion of RER eligible clients from the Annual Levy, we are of the view that this proposal should be applied retroactively to firms who have already been required to contribute to both the Annual Levy and RER without any such relief being available. Given the fact that the REL has only applied since 2020, we are of the view that such relief would not destabilise the funding of the REL, however it would help to put such firms in the same position as firms subject to the REL for the first time after the implementation of this Proposal as well as going some way to relieving the significant impact of the REL on those firms.

### **Proposal 4 – Reduction in Reserves Percentage for Calculating the REL**

The ICCL is proposing to align the Reserves Percentage of the cascade model (“**RM**”) in the RER with the relevant RM factor established in the triennial funding arrangements of the ICCL for the cascade model.

We are supportive of this proposal insofar as it will lessen the effect of the REL on inscope firms. Furthermore, since the stated purpose of the REL is to ensure that the ex-ante portion of the ICS is not impacted by a large transfer of assets into the ICS, it would appear logical to align the amount of the REL with that portion. Moreover, the ICCL has not identified in the consultation paper or elsewhere any reasonable basis for applying an RM for calculating the RER which is not aligned with that set out in the triennial funding arrangements.

Based on the ICCL’s own assessment in the Funding Arrangements for 2022 – 2025, the ICCL can achieve its funding objectives by setting a target of 28% for its Reserves Percentage. Considering this, and taking account of the fact that the RER means that inscope firms may be required to pay very significant amounts which do not correlate with the funds paid by firms subject only to the Annual Levy, IBIE would welcome a reduction in the RM to be used in calculating the REL as it lessens the effect of the REL on those firms.

**Conclusion**

For this response, we have focused on the four proposals outlined in the consultation and have not included any further observations on aspects of the RER that are not directly within the scope of those Proposals.

We remain available should the ICCL wish to discuss any of the above points.

Yours faithfully,

**Mr Kevin Keller**  
**Director and Chief Operations Officer**  
**Interactive Brokers Ireland Limited**